Supreme Court, U.S.
FILED
APR 2 2001
CLERK

No. 00-1307

IN THE
SUPREME COURT OF THE UNITED STATES

WALTER A. HALTER, ACTING
COMMISSIONER OF SOCIAL SECURITY,

Petitioner,

v.

SIGMON COAL COMPANY, INC. and
JERICOL MINING, INC.,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

# Respondents' Opposition To Motion Of The Trustees Of The UMWA Combined Benefit Fund For Leave To File Brief As *Amici Curiae* In Support Of Petitioner

John R. Woodrum
*Counsel of Record*
W. Gregory Mott
Heenan, Althen & Roles, LLP
1110 Vermont Avenue, N.W.
Suite 400
Washington, D.C. 20005
(202) 887-0800

H. Ronnie Montgomery
Post Office Box 3666
Jonesville, Virginia 24263
(703) 346-2006
Counsel for Respondents

RECEIVED
HAND DELIVERED
APR - 2 2001
OFFICE OF THE CLERK
SUPREME COURT, U.S.

## TABLE OF CONTENTS


Page

Table of Contents ..... i

Table of Authorities ..... i

Respondents' Opposition to Motion of the Trustees of the Combined Benefit Fund for Leave to File Brief as *Amici Curiae* in Support of Petitioner ..... 1

Objections ..... 2


## TABLE OF AUTHORITIES


**CASES** **Page**

*Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998) ..... 6

*Holland v. Virginia Lee Co.*, 188 F.R.D. 241 (W.D. Va. 1999) ..... 2, 3

*In re Leckie Smokeless Coal Co.*, 99 F.3d 573 (4th Cir. 1996), *cert. denied*, 520 U.S. 1118 (1997) ..... 3, 4

*McGlothlin v. Connors*, 142 F.R.D. 626 (W.D. Va. 1992) ..... 4

**STATUTES**

Coal Industry Retiree Health Benefit Act of 1992
26 U.S.C. §§ 9701 - 9722 ..... passim

§ 9701(c)(2)(B) ..... 5
§ 9703(e) ..... 4
§ 9705(a) ..... 2
§ 9705(b) ..... 2
§ 9706(a) ..... 3
§ 9706(b)(2) ..... 5
§ 9706(f)(5) ..... 3
§ 9722 ..... 6

**RULES OF THE SUPREME COURT OF THE UNITED STATES**

Rule 37(1) ..... 1

Rule 37(2)(b) ..... 1

Rule 37(5) ..... 1

**LEGISLATIVE MATERIAL**

138 Cong. Rec. S3835 (daily ed. May 10, 2000)(statement of Sen. Rockefeller) ..... 4


## CORPORATE DISCLOSURE STATEMENT

Respondents, Jericol Mining, Inc. and Sigmon Coal Company, Inc., have no parent or subsidiary corporations that require disclosure under Supreme Court Rule 29(6).

No. 00-1307

IN THE
SUPREME COURT OF THE UNITED STATES

WALTER A. HALTER, ACTING
COMMISSIONER OF SOCIAL SECURITY,

Petitioner,

v.

SIGMON COAL COMPANY, INC. and
JERICOL MINING, INC.,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

**Respondents' Opposition To Motion Of The Trustees Of The UMWA Combined Benefit Fund For Leave To File Brief As *Amici Curiae* In Support Of Petitioner**

Respondents, Jericol Mining, Inc. and Sigmon Coal Company, Inc., pursuant to Rule 37(5) of the Rules of the Supreme Court of the United States, object to the Motion of the Trustees of the UMWA Combined Benefit Fund for Leave to File a Brief as *Amici Curiae*. For the reasons noted below, Respondents have not consented to the filing of the *amici curiae* brief and in such circumstances the filing of a *amici curiae* brief is not favored. Rule 37(1) and (2)(b). As set forth below, the brief attached to *Amici*'s motion presents a familiar parade of horribles without adding any relevant matter not already brought to the attention of the Court by the Solicitor General.

**OBJECTIONS**

1. *Amici* have no independent stake in this matter. The UMWA Combined Benefit Fund ("Combined Fund") will suffer no adverse consequence whether or not the Petition is granted, and whether or not the decision below is affirmed. The Coal Act's financing mechanisms ensure that the Combined Fund will obtain full reimbursement of all covered health care expenditures to date (and in the future) for the 86 UMWA retirees ("Shackleford Retirees") that the courts below held were unlawfully assigned to Respondent Jericol Mining, Inc.[1]

2. *Amici* assert that the decision below has prevented the Combined Fund from collecting the balance of the premiums owed by Respondents,[2] and, "if permitted to stand, will create inconsistency in the Combined Fund's application of the Coal Act." *Amici* Brief at 2. Respondents note that *Amici*'s role under the statutory scheme is limited to administering the delivery of health benefits to a fixed and declining group of UMWA retirees, benefits funded by collecting premiums covering the *assigned* beneficiaries from their former union employers

[1] *See generally* Respondents' Brief in Opposition to Petition for a Writ of Certiorari ("Respondents' Opp.") at 15 n.12 (funds Congress made available under the provisions of 26 U.S.C. §§ 9705(a) and (b) for transfer to the Combined Fund from an overfunded UMWA pension plan and from interest generated on a reclamation tax imposed on coal operators serve to reimburse *Amici* for the actual health benefit expenditures of unassigned Combined Fund beneficiaries); *Holland v. Virginia Lee Co.*, 188 F.R.D. 241, 245 (W.D. Va. 1999).

[2] *Amici*'s suggestion that Respondents have failed to pay the Combined Fund premiums they owe, *see Amici* Brief at 2, is unwarranted. In fact, other than the 86 assignments of the Shackleford Retirees voided by the court below, Jericol has paid all statutory premiums *Amici* have assessed since 1993 for the UMWA retirees assigned to Jericol based on their actually having been employed by Jericol. *Amici* fails to point out that the Combined Fund has a statutory entitlement to reimbursement from the Abandoned Mine Land Reclamation Fund administered by the Secretary of the Interior for costs it incurs on behalf of unassigned beneficiaries, including the 86 Shackleford Retirees. If the Combined Fund has failed to seek such reimbursement, that responsibility rests with *Amici*, not with the decision below.

and by annually invoicing the Abandoned Mine Land Reclamation Fund for costs incurred in providing health benefit coverage to the *unassigned* beneficiaries. *Virginia Lee Co.*, 188 F.R.D. at 244. Therefore, no action which reallocates Combined Fund beneficiary assignments (whether taken by the executive branch official charged with making Coal Act assignment allocations, *see* 26 U.S.C. § 9706(a), or by judges empowered to review such agency decisions, *see* 26 U.S.C. § 9706(f)(5)), can possibly "create inconsistency in the Combined Fund's application of the Coal Act."

3. *Amici* nonetheless suggest that their motivation is "to ensure that the base of contributing employers remains as broad as possible, so as to prevent an ever-increasing burden from falling on an ever-declining group of employers, which, in turn, could lead to a repeat of the crisis that Congress sought to resolve when it enacted the Coal Act in the first place." *Amici* Brief at 2-3. However, the spectre of a vicious downward spiral and drastic erosion of the funding base (and accompanying allegations concerning the Combined Fund's future financial ruin) rings hollow, just as it did in 1997 when *Amici* invoked the "ever-increasing . . . ever-declining" mantra in unsuccessfully seeking this Court's review of another decision involving allocation of Coal Act liability to a purported successor.[3] For in the eight years since the

[3] *See In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 586 (4th Cir. 1996), *cert. denied*, 520 U.S. 1118 (1997)(rejecting the Combined Fund's argument that the lower court decision "has set the stage for the same kind of funding crisis that prompted the enactment of the Coal Act" while noting the argument is "insufficiently persuasive to disturb the statutory scheme as we have found it," and that the Fund's concerns are "probably most appropriately addressed to Congress."); *see also* Petition for a Writ of Certiorari at 26, *UMWA 1992 Benefit Plan & UMWA Combined Benefit Fund v. Leckie Smokeless Coal Co.*, No. 96-1117 (U.S. filed Jan. 14, 1997), *reprinted in* Vol. 282 S. Ct. Transcripts of Records and File Copies of Briefs (1996 Term)("*Leckie* Petition")("Unless this important and recurring issue is resolved by this Court, the existing conflict among the courts of appeal . . . will cause systematic elimination of the funding source for retiree health benefits that Congress sought to protect when it enacted the Coal Act.").



Coal Act was enacted in 1992, no assigned operator has been required to pay health care premiums for anyone other than its own assigned beneficiaries. Moreover, no new UMWA retirees will be added to this closed group, *see* 26 U.S.C. § 9703(e), which predominantly consists of Medicare-eligible seniors and is subject to a significant mortality curve. *Compare McGlothlin v. Connors*, 142 F.R.D. 626, 632 (W.D. Va. 1992)(initial beneficiary population of approximately 120,000), *with* 138 Cong. Rec. S3835 (daily ed. May 10, 2000) (statement of Sen. Rockefeller)("There are now only about 65,000 miners and retirees remaining in the [Combined] Fund . . . . Their average age is 78 years old, and more than 45% of the population is over 85 years .").

4. *Amici* press for review of the decision below on the familiar grounds that "the conflict in the circuits [may] greatly jeopardize[] the provision of Combined Fund benefits to the beneficiaries whom the Coal Act is intended to protect." *Amici* Brief at 4; *see Leckie* Reply Brief for Petitioners at 2 (filed Feb. 25, 1997), *reprinted in* Vol. 282 S. Ct. Transcript of Record and File Copies of Briefs ("Review by this Court is needed to resolve the conflict in the courts of appeal and to correct errors below before serious harm is done to the Combined Fund . . . and the many thousands of [beneficiaries] the Coal Act was intended to protect."). *Amici*'s assertion plainly carries far less weight now than it did in 1997 in *Leckie Smokeless*. At least there *Amici* could themselves point to 34 cases involving 10,100 beneficiaries and projected future health care costs "for such a large number of beneficiaries total[ing] more than $500 million." *Leckie* Petition at 3. *Amici's* carefully couched claim (borrowed from the Commissioner) that there are "thousands" of beneficiaries assigned as successors in interest to defunct signatory operators and "many" entities desiring to test SSA's successor

liability position stands in marked contrast. *See Amici* Brief at 9-10. Seven years into the statutory scheme, there is a dearth of pipeline litigants, *see* Respondents' Opp. at 16 -17, and in any event, the outcome of this issue is inconsequential to the beneficiaries, and neither jeopardizes the UMWA retirees' ability to receive their benefits nor the Combined Fund's ability to be reimbursed for providing them. *See id.* at 14-16.

5. Equally misguided is *Amici*'s stock claim that judicial decisions which limit related person or successor liability provide operators with a "blueprint" to shed or evade Combined Fund liability.[4] Congress mandated that the Commissioner's one-time "related person" determinations (which include successor in interest determinations) be fixed on conduct and facts that occurred prior to July 20, 1992. *See* 26 U.S.C. § 9701(c)(2)(B)(related person determination date). Thus any liability-avoiding efforts of the type described by *Amici*, *see supra* n.4, would have to be engaged in by an entity that has *already* been assigned Coal Act liability by the Commissioner based on its *pre*-enactment transactions and corporate relationships. Any such *post*-enactment maneuvering, however, is subject to Coal Act provisions requiring any transferor to notify the Combined Fund of any such transaction and remain the guarantor of the benefits provided. 26 U.S.C. § 9706(b)(2). Moreover, the Coal Act specifically prohibits the course of action *Amici* claims the decision below encourages, and provides *Amici* with the enforcement tools necessary to combat *post*-enactment sham

[4] *Compare Leckie* Petition at 3 ("The court of appeals' error is particularly significant because it establishes a blueprint for coal operators to use bankruptcy to avoid their Coal Act obligations."), *with Amici* Brief at 3 ("If the decision below stands, there is a serious possibility that companies liable under the Coal Act would seek to use the device of a successor firm to evade their statutory obligations . . . [which] could encourage assigned operators to try to terminate their Coal Act liability by changing the ownership of their working assets, distributing the proceeds to shareholders, and continuing their operations in a new corporate form.").



transactions. *See* 26 U.S.C. § 9722. ("If a principal purpose of any transaction is to evade or avoid liability under this chapter, this chapter shall be applied (and such liability will be imposed) without regard to such transaction.").

6. Finally, *Amici* assert that Congress "did not want entities such as Jericol to receive the benefits of predecessor corporations, such as a trained and specialized work force, equipment in place, and uninterrupted operations, without shouldering the retiree health burdens of the previous entity." *Amici* Brief at 16. This ignores the fact that when Shackleford Coal sold assets to Jericol in *1973* and went out of business, Shackleford Coal had no "retiree health burden." As the Court noted in *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998), prior to the watershed *1974* coal wage agreement, companies had never promised lifetime health benefits to the UMWA retirees. In view of the fact that, if it existed today, Shackleford Coal could not constitutionally be required to pay premiums to the Combined Fund for its own union retirees, *Amici*'s assertion that the statute should be rewritten to require Jericol to pay for them seems strained.

The motion to file brief *Amici Curiae* should be denied, because the proffered brief offers nothing that would illuminate the Court's deliberation on the certworthiness of the Petition.

Respectfully Submitted,

John R. Woodrum
*Counsel of Record*
W. Gregory Mott
Heenan, Althen & Roles
Suite 400
1110 Vermont Avenue, N.W.
Washington, D.C. 20005
(202) 887-0800

Harold R. Montgomery
Post Office Box 3666
Jonesville, Virginia 24263
(703) 346-2006
*Counsel for Respondents*



**IN THE**
**SUPREME COURT OF THE UNITED STATES**

| | | |
|---|---|---|
| **WALTER A. HALTER, ACTING COMMISSIONER OF SOCIAL SECURITY,** | ) | |
| **Petitioner,** | ) | |
| **v.** | ) | **Case No. 00-1307** |
| **SIGMON COAL COMPANY, INC. AND JERICOL MINING, INC.,** | ) | |
| **Respondents.** | ) | |

**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing **Respondents' Opposition To Motion Of The Trustees Of The UMWA Combined Benefit Fund For Leave To File Brief As *Amici Curiae* In Support Of Petitioner** to be served via first-class U.S. mail, postage prepaid, on the 2 day of April, 2001 to the following counsel:

Peter Buscemi
Morgan, Lewis & Bockius LLP
1800 M Street, N.W.
Washington, D.C. 20036

Barbara D. Underwood
Acting Solicitor General
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

RECEIVED
HAND DELIVERED
APR - 2 2001
OFFICE OF THE CLERK
SUPREME COURT, U.S.

RECEIVED
SUPREME COURT, U.S.
2001 APR -2 P 4:30

W. Gregory Mott